

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLIFFORD RUSH,)
)
Petitioner,)) 8:18CV6
v.)
)
BRAD JOHNSON, DIRECTOR))
LANCASTER COUNTY JAIL,)) MEMORANDUM AND ORDER
)
Respondent.))
)

This case is before me for initial review. Petitioner has filed a habeas corpus petition. He challenges the *ongoing* state criminal action brought against him for terroristic threats, use of a firearm to commit a felony, false imprisonment, use of a firearm to commit a felony, and possession of a firearm by a prohibited person.¹ He has been arraigned, entered a not guilty plea, and has been detained pending trial. He has a very experienced lawyer in the state proceeding.

In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court recognized the “longstanding public policy against federal court interference with state court proceedings[.]” *Id.* at 43. Under what has become known as “the *Younger* abstention doctrine, federal courts may not, absent extraordinary circumstances, stay or enjoin pending state criminal proceedings.” *Roberts v. Dicarlo*, 296 F. Supp. 2nd1182, 1185 (C.D. Cal. 2003) (applying *Younger* in a habeas case and dismissing without prejudice). *See also Wilson v. Gastelo*, No. CV1701774, WL 2436022, at *2 (C.D. Cal. May 15, 2017), report and recommendation adopted, No. CV1701774, 17 WL 2432553 (C.D. Cal. June 1, 2017) (same).

¹The records of the Nebraska courts are electronically available to this court by special arrangement with the Nebraska judicial system. I take judicial notice of those records regarding this case as I am allowed to under Fed. R. Evid. 201(b) and otherwise.

“*Younger* abstention is required if the state proceedings are (1) ongoing; (2) implicate important state interests; and (3) afford the plaintiff an adequate opportunity to raise the federal issue.” *Roberts*, 296 F. Supp. 2nd at 1185. Such is the case here.

I realize that abstention may be inappropriate in extraordinary circumstances. However, none are evident here.

Lastly, a petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. [28 U.S.C. § 2253\(c\)\(1\)](#); [28 U.S.C. § 2253\(c\)\(2\)](#); [Fed. R. App. P. 22\(b\)\(1\)](#). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in [Slack v. McDaniel](#), 529 U.S. 473, 484-485 (2000). I have applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that the petition (filing no. [1](#)) is dismissed without prejudice. No certificate of appealability has been or will be issued. A separate judgment will be issued.

DATED this 17th day of January, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge